

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

WADE BRUMBAUGH

PLAINTIFF

v.

CAUSE NO. 1:09cv331 LG-RHW

CITY OF D'IBERVILLE

DEFENDANT

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

BEFORE THE COURT is the Defendant's Motion to Dismiss [15] pursuant to FED. R. CIV. P. 25. There has been no response filed. The Court finds the Motion is well-taken and should be granted.

DISCUSSION

The City of D'Iberville requests dismissal for Plaintiff's failure to substitute a party to prosecute this action subsequent to Plaintiff Brumbaugh's death on February 27, 2010. The City filed a Suggestion of Death on March 3, 2010, triggering the requirement for a motion for substitution under Rule 25. The Rule provides that a motion for substitution may be made by any party or by the decedent's successor or representative; however, if the motion is not made within ninety days after service of a statement noting the death, the action by or against the decedent must be dismissed. FED. R. CIV. P. 25(a)(1).

Plaintiff did not file a motion for substitution within 90 days after service of the suggestion of death. Plaintiff's counsel has filed a motion to withdraw from representation, stating that Plaintiff's heirs have no interest in pursuing this action. Under these circumstances, the City's Motion to Dismiss should be granted.

IT IS THEREFORE ORDERED AND ADJUDGED that the Defendant's Motion to Dismiss [15] pursuant to FED. R. CIV. P. 25 is **GRANTED**. Plaintiff's claims are dismissed with prejudice.

SO ORDERED AND ADJUDGED this the 14th day of November, 2011.

s/ *Louis Guirola, Jr.*

Louis Guirola, Jr.
Chief United States District Judge